

In the Court of Appeals of the State of Alaska

Peter Nick, Jr.,

Appellant,

v.

State of Alaska,

Appellee.

)
) Court of Appeals No. **A-13427**
)

Order

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)
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) Date of Order: **June 3, 2019**
)

Trial Court Case # **4BE-15-00234CI**

Attorney Fleur L. Roberts, who, under contract with the Office of Public Advocacy, represents the Appellant, Peter Nick Jr., has filed a motion asking to withdraw from her representation in this appeal. Ms. Roberts explains in her affidavit supporting the motion that Mr. Nick no longer desires to have her as his counsel, and that he wishes to either represent himself or to have a different attorney appointed.

Because Mr. Nick is represented at public expense (by contract through the Office of Public Advocacy), he does not have the right to reject appointed counsel and have new counsel appointed at public expense in the absence of any showing of cause for that change. *See Mute v. State*, 123 P.3d 1081, 1088 (Alaska App. 2005). If Mr. Nick wants new counsel appointed at public expense, then the superior court must determine whether there is good cause for that change.

In the alternative, if Mr. Nick may instead desire to represent himself in this appeal. But because he also has a constitutional right to counsel to assist him in the appeal, unless and until he knowingly and intelligently waives that right, any legal proceedings in which he is not represented by counsel would be void. *See Johnson v.*

Zerbst, 304 U.S. 458, 467-68 (1938) (holding that a deprivation of the right to counsel is equivalent to a lack of jurisdiction). Hence, if Mr. Nick desires to represent himself, then the superior court must determine whether Mr. Nick is willing to enter a knowing and intelligent waiver of the right to counsel, and if so, whether he is capable of representing himself on appeal.

Accordingly, IT IS ORDERED:

1. Mr. Nick's case is remanded to the superior court to determine whether there is good cause to allow Ms. Roberts to withdraw from representing Mr. Nick, and, if so, to appoint new counsel to represent Mr. Nick at public expense and direct that counsel to promptly file an entry of appearance in this appeal. If the superior court finds that there is no good cause to appoint new counsel at public expense, then Ms. Roberts shall continue to represent Mr. Nick, and the superior court shall inform this Court of these circumstances.

2. If Mr. Nick instead wishes to represent himself — rather than be represented by Ms. Roberts — then the superior court shall conduct an inquiry to make sure that Mr. Nick understands the benefits of counsel and the dangers of representing himself, and to make sure that Mr. Nick is minimally competent to represent himself — i.e., that he is capable of presenting a comprehensible argument on appeal.

3. If, after Mr. Nick is advised of the benefits of counsel and the dangers of self-representation, he still wishes to represent himself, and if the superior court concludes that Mr. Nick is at least minimally competent to do so, the superior court shall inform this Court of these circumstances. Mr. Nick will then be allowed to represent himself in this appeal.

4. If, on the other hand, Mr. Nick decides not to represent himself, or if the

superior court concludes that Mr. Nick is not minimally competent to pursue this appeal on his own, then Ms. Roberts shall continue to represent Mr. Nick. The superior court shall inform this Court of these circumstances.

5. Because Mr. Nick has a constitutional right to the assistance of counsel on appeal, he must expressly and knowingly waive this right if he wishes to dismiss his court-appointed counsel and represent himself. Accordingly, if Mr. Nick is unable to make up his mind about whether to represent himself, this means that he has not waived his right to counsel, and Ms. Roberts shall continue to represent him in this appeal.

6. Mr. Nick may also desire, if he has the means, to hire a private attorney to represent him. If this is the case, then the superior court will give Mr. Nick 60 days to retain private counsel, and the superior court shall inform this Court of this circumstance.

7. The superior court's report on these matters shall be transmitted to this Court on or before **July 2, 2019**.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts

Mindi Johnson

M. Johnson, Deputy Clerk

cc: Court of Appeals Judges
Judge Blankenship
Central Staff
Trial Court Clerk - Fairbanks

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